

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

BRANDON DUANE JOHNSON,

Petitioner,

vs.

CAPTAIN BODINE; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

**CV-20-102-BLG-BMM-TJC**

**ORDER**

Petitioner Brandon Duane Johnson (“Johnson”) filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on July 8, 2020. (Doc. 1). United States Magistrate Judge Timothy Cavan issued Findings and Recommendations in this matter on October 5, 2020. (Doc. 5).

Judge Cavan recommended that this Court dismiss Johnson’s petition without prejudice for failure to exhaust his state court remedies. (Doc. 5 at 3). *See Castillo v. McFadden*, 399 F.3d 993, 998-99 (9th Cir. 2005) (requiring habeas petitioners to give state courts a “‘fair opportunity’ to apply controlling legal principles to the facts bearing upon [the petitioner’s] constitutional claim”). Judge Johnston also recommended that this Court deny issuance of a certificate of

appealability under Rule 11(a) of the Rules Governing § 2254 Proceedings, because Johnson “has not yet made a substantial showing that he was deprived of a constitutional right” under 28 U.S.C. § 2253(c)(2). (Doc. 5 at 5).

No party has filed objections to the Findings and Recommendations. The Court has reviewed Judge Cavan’s Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Cavan’s Findings and Recommendations and adopts them in full.

### **ORDER**

Accordingly, **IT IS ORDERED:**

1. Johnson’s Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED** without prejudice as unexhausted.
2. The Clerk of Court is directed to enter a judgment of dismissal.
3. A certificate of appealability is **DENIED**.

Dated this 28th day of October, 2020.

A handwritten signature in blue ink, reading "Brian Morris".

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Brian Morris, Chief District Judge  
United States District Court